

IN THE UNITED STATES DISTRICT COURT  
FOR THE EASTERN DISTRICT OF NORTH CAROLINA  
SOUTHERN DIVISION  
No. 7:07-CV-166-H  
ALL CASES

LEE LEWIS and JANICE HOSLER, et al.,

Plaintiffs,

v.

SMITHFIELD PACKING COMPANY, INC.,

Defendant.

**MEMORANDUM AND  
RECOMMENDATION**

This case comes before the court on the motion (D.E. 350) of defendant Smithfield Packing Company, Inc. ("defendant") to dismiss, or in the alternative for summary judgment on, the claims of plaintiff and certain opt-in plaintiffs (collectively "bankruptcy plaintiffs") who failed to disclose this action in their bankruptcy proceedings. Defendant filed a memorandum (D.E. 355) and exhibits (D.E. 355-1 to 355-64) in support of its motion. Plaintiffs Lee Lewis et al., filed a notice (D.E. 372) stating that they do not oppose defendant's motion.

The court agrees with defendant that the failure of the bankruptcy plaintiffs listed below to disclose their claims deprives them of standing in this action and thereby the court of subject matter jurisdiction over their claims. *See Brockington v. Jones*, No. 4:05-3267-RBH-TER, 2007 WL 4812205, at \*3 (D.S.C. 28 Nov. 2007). The court also agrees that, if these bankruptcy plaintiffs were deemed to have standing, each of them would be judicially estopped from pursuing their claims against defendant. *See id.*, at \*4-5.

It is therefore RECOMMENDED that defendant's motion to dismiss the claims of the bankruptcy plaintiffs as listed below be ALLOWED and that this action be DISMISSED as to them

for lack of subject matter jurisdiction pursuant to Rule 12(b)(1) of the Federal Rules of Civil Procedure:

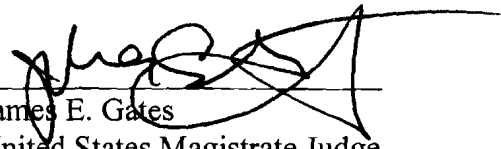
- (1) Lee Lewis
- (2) Antonio Fitzgerald Anderson
- (3) Wanda Carol Bartley
- (4) Janice Maria Brown
- (5) Kathy L. Bullard
- (6) Tammy Bullard Collins
- (7) Edna Thomas Fairley
- (8) Sonya Danielle Ford
- (9) Gloria Ann Graham
- (10) Ella Mae Humphrey
- (11) Gloria Ann Little
- (12) Tracy Kevin Jacobs
- (13) Henrietta James
- (14) Dorothy H. Jiminez
- (15) Raymond C. Johnson
- (16) Vonya Rochelle Jones
- (17) Brenda Faye Mathis
- (18) Tony Darnell Mayfield
- (19) William Henry McCummings
- (20) Nelson Leonard McKoy
- (21) Elizabeth Ann Owens Miles

- (22) Ruby Lee Miles
- (23) James E. Newton, Jr.
- (24) Thomas Tuthill Powell, Jr.
- (25) Pamela Terrel Richardson
- (26) Eugene Rogers
- (27) Deloris Shipman
- (28) Kathleen Mary Trumble
- (29) Sandra Gail Turner
- (30) Tonya Lanelle West

In the alternative, if the determination is made that the court has subject matter jurisdiction, it is RECOMMENDED that defendant's alternative motion for summary judgment as to the foregoing plaintiffs be ALLOWED and that this action be DISMISSED as to them pursuant to Rule 56 of the Federal Rules of Civil Procedure.

The Clerk shall send copies of this Memorandum and Recommendation to counsel for the respective parties, who have 14 days, or such other period as the court specifies, to file written objections. Failure to file timely written objections bars an aggrieved party from receiving a de novo review by the District Judge on an issue covered in the Memorandum and Recommendation and, except upon grounds of plain error, from attacking on appeal the unobjected-to proposed factual findings and legal conclusions accepted by the District Judge.

SO ORDERED, this 26 day of July 2010.

  
James E. Gates  
United States Magistrate Judge